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<b>PRE-APPEAL BRIEF REQUEST FOR REVIEW</b>		<b>Docket Number (Optional)</b>  2003P01019WOUS
	Application Number	Filed
	10/575,433	03/24/2006
	First Named Inventor	
	Martin Oberhomburg	
	Art Unit	Examiner
	3742	Mark H. Paschall

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a notice of appeal.

The review is requested for the reason(s) stated on the attached sheet(s).  
Note: No more than five (5) pages may be provided.

I am the

☐ Applicant/Inventor

☐ Assignee of record of the entire interest. See 37 C.F.R. § 3.71. Statement under 37 C.F.R. § 3.73(b) is enclosed. (Form PTO/SB/96)

☐ Attorney or agent of record \_\_\_\_\_  
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Registration number if acting under 37 C.F.R. § 1.34 39,715

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July 1, 2010  
Date

**NOTE:** Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below.\*

☒ \*Total of 1 form/s are submitted.

This collection of information is required by 35 U.S.C. 132. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11, 1.14 and 41.6. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. **SEND TO: Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.**

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**STATEMENT OF ARGUMENTS IN SUPPORT OF  
PRE-APPEAL BRIEF REQUEST FOR REVIEW**

Claims 11, 15 and 16 were rejected under 35 U.S.C. §102(e) over Sauter et al. (U.S. Patent No. 6,967,314). Further, claims 11, 15, 16, 21, 23 and 25 were rejected under 35 U.S.C. §103(a) over Sauter et al., and further in view of Barnes et al. (U.S. Patent No. 6,255,630) or Ohouchi (U.S. Patent No. 4,650,970). Claims 12-14, 17-20, 22 and 24 were rejected under 35 U.S.C. §103(a) over Sauter et al. in view of Stockley (U.S. Patent Publication No. 2005/0000958). Finally, claims 12-14, 17-20, 22 and 24 were rejected under 35 U.S.C. §103(a) over Sauter et al. in view of Barnes et al. or Ohouchi, and further in view of Stockley. The Final Rejection includes the errors that follow.

**Error #1 Sauter et al. does not teach or suggest a cooking area comprising, *inter alia*, at least one heating element, in which an indication device indicates the set heating output in first and second operating modes, wherein the first and second operating modes are indicated from first and second sets of symbols of different types of symbolism (claim 11).**

Claim 11 is directed to a cooking area comprising at least one heating element, a power controller for setting a heating output of the heating element which operates according to the set heating output in at least one of a first operating mode and a second operating mode, and an indicating device which indicates the set heating output in the first operating mode with symbols from the first set of symbols. The indicating device indicates the set heating output in the second operating mode with symbols from a second set of symbols of a different type of symbolism compared to the first set of symbols.

The claimed arrangement eliminates any confusion as to whether the heating element is operating in the first mode or the second mode (see page 2, lines 23-27).

The central issue regarding claim 11 is whether Sauter et al. teaches a heating element which operates in first and second modes, and an indicating device which indicates the power output in the first and second modes using first and second sets of symbols of different types of symbolism. For example, the first set of symbols includes the numbers 0 to 9 and the second set of symbols does not include numbers (claim 13), such as one or more of the three horizontal display elements on a seven-segment display (claim 14). Although the rejection under 35 U.S.C. §102(e) based on Sauter et al. was initially applied in the April 28, 2009 Office Action, and traversed in Applicant's June 16 response, the Examiner's September 4, 2009 Office Action does not address Applicant's argumentation. In particular, page 5 of the September 4 Office Action stated that Applicant's argumentation with respect to claims 11-20 have been considered but are moot in view of the new grounds of rejection. Of course, the

grounds of rejection for claim 11 under 35 U.S.C. §102(e) have been maintained throughout all of the Office Actions, yet the Examiner has yet to provide any response. In particular, in the Response to Arguments section of the Final Rejection, the Examiner provides absolutely no response to Applicant's arguments. While the response to arguments indicates that Sauter et al. as modified teach the broadly claimed display system for an oven, there is no response as to why Sauter et al. anticipates claim 11.

Reconsideration and withdrawal of the rejection under 35 U.S.C. §102(e) is respectfully requested.

In addition, independent claim 11 was rejected under 35 U.S.C. §103(a) over Sauter et al., in view of either Barnes et al. or Ohouchi.

Within the context of that rejection, the Examiner takes the position that “for instance a number 4 on a display is a different symbol from a number 7 on the display”. Applicant respectfully traverses this position given that the numbers 4 and 7 belong to the same set of symbols and they are not of different symbolism, as claimed. Examiner Paschall thankfully seemed to acknowledge that it was a stretch to interpret the numbers 4 and 7 of being of different symbolism during a telephonic interview conducted on November 18, 2009. And to even more specifically emphasize this point, claim 11 was amended to specify that the second set of symbols is of a different type of symbolism compared to the first set of symbols. In Sauter et al., the operator is unable to distinguish between the faulty operation, e.g., when power is off during the first mode, and a non-faulty operation, e.g., when the power is off during the clocked operating mode in which the heating element is turned on and off during normal operation.

Ohouchi and Barnes et al. show various types of displays but neither teach the use of two different types of symbols for displaying the same parameter, i.e., heating output. For example, as discussed during the November 18, 2009 interview, Ohouchi teaches a bar graph 12 to display oven temperature, whereas display 11 is for displaying time. As such, Ohouchi does not show the use of two sets of symbols used to indicating heating output in first and second operating modes as set forth in claim 11. Further, Barnes et al. shows multiple displays for displaying power level, mode and temperature. See Figure 2.

The Response to Argument section of the Final Rejection attempts to address Applicant's arguments in regard to the §103 rejection. In particular, on page 5, the Examiner points out that Barnes et al. and Ohouchi teach various types of displays, but they do not relate to the same parameter. For example, the Examiner indicates that time display is a different type of symbolism than temperature display. While this may be true, it clearly

shows that the Examiner does not understand that the claims set for the use of two different types of symbols for displaying the same parameter, i.e., heating output in the case of claim 11. The Examiner goes on to further state that Barnes et al. teaches a total of four displays per column 3, the first display being time data, the second display being temperature data, the third display defining mode, and a fourth display depicting lighted bars. Of course, these are not directed toward the same parameter as set forth in the claim.

Reconsideration and withdrawal of the rejection are respectfully requested.

**Error #2 The prior art does not teach or suggest that the indicating device consists of a seven-segment display (claims 12 and 22).**

Claim 12 sets forth that the indicating device consists of a seven-segment display – for indicating the heat output in the first and second modes. The Examiner does not provide any response to Applicant’s traversal in this regard.

Similar arguments apply to claim 22. In addition, claim 22 recites a seven-segment display to alternatively display the first and second set of symbols. Thus, claim language is not specifically addressed in the Final Rejection.

Reconsideration and withdrawal of the rejection are respectfully requested.

**Error #3 The applied prior art does not teach that the first set of symbols comprises a series of numbers from 0 to 9 and the second set of symbols does not include numbers (claims 13 and 23).**

In the Final Rejection (page 4, last sentence), the Examiner states that “As per claim 3 [13] use of numerical symbols as set forth in Sauter et al. and if modified as set forth above it is inherent that use of numerical display numbers is obvious for the artisan.” The Examiner was requested to clarify this statement but has failed to do so. In any event, the Examiner’s statement that “the claim are silent as to just what a different type of symbol is.” is clearly incorrect as claim 13 very clearly specifies what the symbols include.

Reconsideration and withdrawal of the rejection are respectfully requested.

**Error #4 The applied prior art does not teach that the second set of symbols comprises one or more three transverse segments of the seven-segment display (claims 14 and 24).**

In the Office Action, the Examiner sets forth that Barnes et al. defines transverse segments. However, this is the first time that the Examiner has provided this interpretation. In any event, claim 14 specifies that the transverse segments are of the seven-segment display. Thus, the bar graphs of Barnes et al. do not qualify as a seven-segment display as set forth in claim 14.

Reconsideration and withdrawal of the rejection are respectfully requested.

**Error #5 The applied prior art does not teach or suggest the claimed indicating device which indicates the set output in first and second operating modes using first and second sets of symbols of different types of symbolism in a manner that visually distinguishes the first operating mode from the second operating mode (claim 21).**

Independent claim 21 is directed to an appliance that includes at least one operating element, a controller for setting output of the operating element which operates according to the set output in at least one of a first operating mode and a second operating mode. Claim 21 further specifies an indicating device which indicates the set output in the first operating mode with symbols from a first set of symbols, wherein the indicating device indicates the set output in the second operating mode with symbols from a second set of symbols of a different type of symbolism compared to the first set of symbols in a manner that visually distinguishes the first operating mode from the second operating mode.

Accordingly, for reasons similar to that noted above, the applied prior art, in particular, Sauter et al., or Sauter et al. in view of Barnes et al./Ohouchi, does not teach an indicating device which indicates set output in the first and second operating modes using symbols of different types of symbolism in a manner that visually distinguishes the first operating from the second operating mode. Again, all of the examples referred to in the Final Rejection are directed toward different parameters, e.g., time and temperature, etc.

Reconsideration and withdrawal of the rejection are respectfully requested.

For the reasons noted above, the Final Rejection should be withdrawn and the application passed to allowance.